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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

5   ORACLE USA, INC., a Colorado corporation;
ORACLE AMERICA, INC., a Delaware
6   corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation,
7
            Plaintiffs,
8
        v.
RIMINI STREET, INC., a Nevada corporation;
9   AND SETH RAVIN, an individual,

10   Defendants.

Case No. 2:10-cv-0106-LRH-PAL

**RIMINI STREET INC.'S AND SETH
RAVIN'S [PROPOSED]
JURY INSTRUCTIONS**

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Hon. Larry R. Hicks
United States District Court Judge

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2   There are three separate Oracle plaintiffs in this case: Oracle USA, Inc., Oracle America,

3   Inc., and Oracle International Corporation. Not all plaintiffs assert all claims. Oracle USA, Inc.

4   does not assert any claims. When I refer to "Oracle," I am referring to both "Oracle America"

5   and "Oracle International Corporation." If I refer to a plaintiff by its specific name, it is because

6   only that plaintiff asserts that claim. You must keep the different plaintiffs straight when

7   answering the questions asked on the verdict form. For example, only Oracle International

8   Corporation asserts copyright infringement. Therefore, when asked whether Oracle International

9   Corporation has established copyright infringement, you must make sure that plaintiff Oracle

10 International Corporation has presented specific evidence establishing its claim; evidence related

11 to Oracle America is not necessarily relevant to Oracle International Corporation's copyright

12 infringement claim.

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JURY INSTRUCTION NO. _____

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2   When a party has the burden of proof on any claim or affirmative defense by a

3 preponderance of the evidence, it means you must be persuaded by the evidence that the claim or

4 affirmative defense is more probably true than not true. If the evidence submitted by both sides

5 is balanced, then the party with the burden of proof has not demonstrated a preponderance of the

6 evidence. For example, if you find that Oracle's claim is equally likely as unlikely, then there is

7 no preponderance of the evidence, and you must find for Rimini Street.

8   You should base your decision on all of the evidence, regardless of which party presented

9 it.

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JURY INSTRUCTION NO. _____

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2   Copyright is the exclusive right to copy. This right to copy includes the exclusive rights

3 to:

4   1)   authorize, or make additional copies, or otherwise reproduce the copyrighted

5   work in copies;

6   2)   recast, transform, adapt the work, that is prepare derivative works based upon the

7   copyrighted work; and

8   3)   distribute copies of the copyrighted work to the public by sale or other transfer of

9   ownership or by rental or lease or lending.

10   It is the owner of a copyright who may exercise these exclusive rights to copy. The term

11 "owner" includes the author of the work, an assignee, or an exclusive licensee. In general,

12 copyright law protects against distribution of substantially similar copies of the owner's

13 copyrighted work without the owner's permission. An owner may enforce these rights to

14 exclude others in an action for copyright infringement. Even though one may acquire a copy of,

15 or a license to use, the copyrighted work, the copyright owner retains rights and control of that

16 copy, including uses that may result in additional copies or alterations of the work.

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JURY INSTRUCTION NO. ____

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2   The works involved in this trial include:

3   1)   literary works, in which words, numbers, or other verbal or numerical symbols or

4   indicia are expressed in such material objects like books or manuscripts; and

5   2)   computer programs, that is, a literary work composed of a set of statements or

6   instructions to be used directly or indirectly in a computer to bring about a certain

7   result.

8   You are instructed that a copyright may be obtained in a list of printed materials and

9   computer programs, which is reproduced in your juror handbook.

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     [.]
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12   These works can be protected by the copyright laws. Only that part of the works

13   comprised of original works of authorship fixed in any tangible medium of expression from

14   which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid

15   of a machine or device, is protected by the Copyright Act.

16   Copyright protection for an original work of authorship does not extend to any idea,

17   procedure, process, system, method of operation, concept, principle, or discovery, regardless of

18   the form in which it is described, explained, illustrated, or embodied.

19   Under federal law, software installation media is not protected under federal copyrights.

20   This is because software copyrights are separate and distinct from the physical objects on which

21   they may be embodied.

22   Thus, the rights granted by certain software licensing agreements are not limited or

23   restricted to any specific physical embodiment of the software, like Oracle's software installation

24   media. The license rights contained in certain customer licenses apply equally to the copies of

25   the copyrighted software maintained on Rimini Street's systems regardless of whether Rimini

26   Street used the specific installation media provided by Oracle to make those copies.

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JURY INSTRUCTION NO. ____

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2 An original work may include or incorporate elements taken from prior works, works

3 from the public domain, or works owned by others, with the owner's permission.

4 The original parts of the plaintiff's work are the parts created:

5 1) independently by the work's author, that is, the author did not copy it from

6   another work; and

7 2) by use of at least some minimal creativity.

8 In copyright law, the "original element" of a work need not be new or novel.

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JURY INSTRUCTION NO. ____

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2   A copyright owner is entitled to exclude others from creating derivative works based

3   upon the owner's copyrighted work. The term derivative work refers to a work based on one or

4   more pre-existing works, such as any other form in which the pre-existing work is recast,

5   transformed, or adapted. Accordingly, the owner of a copyrighted work is entitled to exclude

6   others from recasting, transforming or adapting the copyrighted work without the owner's

7   permission.

8   If the copyright owner exercises the right to allow others to create a derivative work

9   based upon the copyrighted work, this derivative work may also be copyrighted. Only what was

10   newly created, such as the editorial revisions, annotations, elaborations, or other modifications to

11   the pre-existing work, is considered to be the derivative work.

12   Copyright protection of a derivative work covers only the contribution made by the

13   author of the derivative work. If the derivative work incorporates pre-existing work by others,

14   the derivative author's protection is limited to elements added by the derivative author to the pre-

15   existing work of others.

16   The owner of a derivative work may enforce the right to exclude others in an action for

17   copyright infringement.

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JURY INSTRUCTION NO. ____

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2   Oracle International Corporation claims ownership of certain copyrights and seeks

3   damages against Rimini Street and Seth Ravin for copyright infringement. Rimini Street and

4   Seth Ravin deny infringing the copyright and assert an affirmative license defense to some of the

5   conduct at issue. To help you understand the evidence in this case, I will explain some of the

6   legal terms you will hear during this trial.

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JURY INSTRUCTION NO. ____

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2   To prevail on its direct infringement claim in the circumstances of this case, Oracle

3   International Corporation must prove the following by a preponderance of the evidence:

4   1)   Oracle International Corporation is the owner or exclusive licensee of a valid

5   copyright in an original work;

6   2)   Rimini Street copied original elements from, created derivative works from, or

7   distributed the original work; and

8   3)   Rimini Street did not have permission to copy the original elements of the

9   copyrighted work.

10   The parties have agreed that Oracle International Corporation owns or is the exclusive

11   licensee of certain registered copyrighted works at issue in this case, which means that Oracle

12   International Corporation has proven the first element for those specific registered works only.

13   If you find that Oracle International Corporation has proven all of these elements for each

14   and every copyrighted work on which it seeks damages, your verdict should be for Oracle

15   International Corporation. If, on the other hand, Oracle International Corporation has failed to

16   prove a single one of these elements, your verdict should be for Rimini Street. Rimini Street

17   claims that its clients' licenses granted it permission to make the copies it did. If you agree that

18   the licenses allowed Rimini Street to make the copies it did, then you must find that Rimini

19   Street did not infringe Oracle International Corporation's copyrights.

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JURY INSTRUCTION NO. ____

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2   Instruction __ states that Oracle International Corporation has the burden of proving that

3   Rimini Street copied original elements from Oracle International Corporation's copyrighted

4   work.   Oracle International Corporation may show Rimini Street copied from the work by

5   showing by a preponderance of the evidence that Rimini Street had access to Oracle International

6   Corporation's copyrighted work and that there are substantial similarities between Rimini

7   Street's work and original elements of Oracle International Corporation's work.

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JURY INSTRUCTION NO. ____

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2   A defendant may be liable for copyright infringement engaged in by another if he knew

3 or had reason to know of the infringing activity and intentionally induced or materially

4 contributed to that infringing activity.   If you find that Rimini Street infringed Oracle

5 International Corporation's copyright in a particular work, you may proceed to consider Oracle

6 International Corporation's claim that Seth Ravin contributorily infringed that copyright. To

7 prove copyright infringement, the plaintiff must prove both of the following elements by a

8 preponderance of the evidence:

9   1)   Seth Ravin knew or had reason to know of Rimini Street's infringing activity; and

10   2)   Seth Ravin intentionally induced or materially contributed to Rimini Street's

11   infringing activity.

12   If you find that Oracle International Corporation proved both of these elements, you

13 should find for Oracle and against Seth Ravin on the copyright infringement claim as to

14 contributory infringement. If, on the other hand, Oracle International Corporation has failed to

15 prove either of these elements, you should find for Seth Ravin and against Oracle International

16 Corporation on the copyright infringement claim as to contributory infringement.

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JURY INSTRUCTION NO. _____

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2   If you find that Rimini Street infringed Oracle International Corporation's copyright in a

3   particular work, you may consider Oracle International Corporation's claim that Seth Ravin

4   vicariously infringed that copyright. Oracle International Corporation has the burden of proving

5   each of the following by a preponderance of the evidence:

6   1)   Seth Ravin profited directly from Rimini Street's infringing activity;

7   2)   Seth Ravin had the right and ability to supervise or control Rimini Street's

8   infringing activity; and

9   3)   Seth Ravin failed to exercise that right and ability.

10   If you find that Oracle International Corporation proved each of these elements, you

11   should find for Oracle International Corporation and against Seth Ravin on the copyright

12   infringement claim as to vicarious infringement. If, on the other hand, Oracle International

13   Corporation has failed to prove any of these elements, you should find for Seth Ravin and

14   against Oracle on the copyright infringement claim as to vicarious infringement.

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JURY INSTRUCTION NO. ____

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2   Copyright misuse is an affirmative defense to copyright infringement. Its purpose is to

3   prevent a holder of a copyright from leveraging its limited monopoly on the copyrighted work in

4   order to restrict competition in a market for a product or service in which it does not have a

5   copyright.

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JURY INSTRUCTION NO. ____

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2   To prove the affirmative defense of copyright misuse, Rimini Street must prove, by a

3 preponderance of the evidence, that Oracle International Corporation violated the public policies

4 underlying the copyright laws. The public policies behind the copyright laws are to promote the

5 progress of science and the useful arts. Rimini Street need not prove that Oracle International

6 Corporation violated the antitrust laws in order to prevail on Rimini Street's copyright misuse

7 defense.

8   If you find from the facts that Oracle International Corporation has used its copyrights to

9 indirectly gain commercial control over products it does not have copyrighted, then you will find

10 for Rimini Street. In considering the facts of this case, you may consider the following to be a

11 misuse of the copyright protection: Whether Oracle International Corporation used a license

12 agreement to limit a customer's rights to decide whether to use other forms of coding systems in

13 addition to the copyright holder's; or whether Oracle International Corporation used a license

14 agreement to prevent the development of similar support service products.

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JURY INSTRUCTION NO. ____

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2   You have heard evidence and argument regarding a company called "TomorrowNow."

3   You may not use this evidence to assume that because Seth Ravin was at one time associated

4   with TomorrowNow, and TomorrowNow stipulated and ultimately pleaded guilty to infringing

5   Oracle's copyrights, Rimini Street infringed, or was more likely to have infringed, Oracle's

6   copyrights.   You also cannot use this evidence as proof of whether Seth Ravin's or Rimini

7   Street's conduct was willful, wanton, or unjustifiable.

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JURY INSTRUCTION NO. ____

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2   If you find that Rimini Street is liable for infringing Oracle International Corporation's

3 copyrights, you must determine Oracle International Corporation's damages.   Oracle

4 International Corporation must prove its damages by a preponderance of the evidence. That is,

5 Oracle International Corporation must establish with evidence that it is more likely than not that

6 it was damaged as a result of the infringement. If you find that it is equally likely that Oracle

7 International Corporation was not damaged, then you must find that it has not proven that it

8 suffered damages. Additionally, if you find that it is only a hypothetical possibility that the

9 infringement caused damages, then you must find that Oracle International Corporation has not

10 proven that it suffered damages.

11   There are two alternate types of damages available to Oracle International Corporation:

12   1)   Actual damages suffered as a result of the infringement; or

13   2)   Statutory damages established by Congress in the Copyright Act.

14 Oracle International Corporation may not recover both types of damages.

15   If Oracle International Corporation demonstrates injury, but it cannot prove, without

16 undue speculation, either causation or the value of its actual damages suffered as a result of the

17 infringement, then you must award Oracle International Corporation statutory damages.

18   "Undue speculation" means that Oracle International Corporation cannot establish an

19 objective non-speculative damages amount. For example, if the evidence presented by Oracle

20 International Corporation does not allow you to establish an objective, non-speculative damages

21 amount, then actual damages would be speculative and you must award statutory damages. If

22 you have to guess the amount of actual damages, then you are speculating and should not award

23 actual damages, and you should instead award statutory damages.

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JURY INSTRUCTION NO. ____

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2   As a measure of its actual damages, Oracle International Corporation may recover either:

3   (i) the fair market value of use; or (ii) Oracle International Corporation's lost profits plus any

4   profits Rimini Street obtained from its infringement. The fair market value of use is the license

5   that the parties would have negotiated if Rimini Street had obtained a license for the rights you

6   have found that Rimini Street infringed. The value of a license to Rimini Street is the amount

7   that it would have cost Rimini Street to implement a non-infringing alternative.

8   You are required to select the best measure of actual damages. You should determine

9   actual damages separately for each Defendant that you find liable for copyright infringement.

10   I will now explain these methods to you.

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JURY INSTRUCTION NO. _____

1   The first type of actual damages is the fair market value of use. In order to decide on the

2 value of the license that Rimini Street and Oracle International Corporation would have agreed

3 to, you should assume that the parties did negotiate a license just before the infringement began.

4 You should assume that in this negotiation, Rimini Street was a willing buyer of the license, and

5 that Oracle International Corporation was a willing seller of the license. You must determine

6 what would have been the result of this negotiation in order to determine the fair market value of

7 the license. You should assume that the license the parties negotiated was for the actual, real-

8 world use made by Rimini Street of Oracle International Corporation's copyrighted works. You

9 should assume that both parties would have acted reasonably and economically rational in the

10 hypothetical negotiations.

11   To determine the amount of the license that Rimini Street and Oracle International

12 Corporation would have negotiated, you must rely on objective evidence. You may not guess or

13 rely on speculative testimony, guesswork, or conjectural evidence.   Oracle International

14 Corporation bears the burden of proving the value of the hypothetical license based on objective

15 evidence by a preponderance of the evidence. You may consider evidence and facts that

16 happened after the date of the hypothetical negotiation to the extent that those events and facts

17 provide insight into the expectations of the parties at the time the infringement first began, or

18 insight into the amount a willing buyer would have paid a willing seller at the time of the

19 infringement.

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JURY INSTRUCTION NO. _____

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2   You should assume that the value of the hypothetical license is the amount that it would

3   have cost Rimini Street to implement a non-infringing alternative. In other words, if Rimini

4   Street could have ordered its business in a way that did not infringe, then the cost to implement

5   that non-infringing alternative is the value of the hypothetical license, because Rimini Street

6   would not have paid Oracle International Corporation more for the license than it would have

7   cost Rimini Street to implement the non-infringing model.

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JURY INSTRUCTION NO. ____

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2   The second type of actual damages is lost profits. To calculate Oracle International

3   Corporation's lost profits, you must determine what profits Oracle International Corporation

4   proved that it would have made without the infringement by Rimini Street, minus any expenses

5   Oracle International Corporation would have incurred in making those profits. To recover lost

6   profits, Oracle International Corporation must prove by a preponderance of the evidence that:

7   1)   Rimini Street caused such damages (see Instruction __); and

8   2)   The amount. You may not guess the amount or rely on speculative evidence to

9   calculate lost profits.

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JURY INSTRUCTION NO. ____

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2   Oracle International Corporation must prove a causal relationship between Oracle's

3   losses and Rimini Street's infringement. Oracle International Corporation must demonstrate that

4   but for Rimini Street's infringement, Oracle International Corporation would not have lost each

5   of the clients for which Oracle International Corporation seeks damages. That means that if a

6   client left Oracle International Corporation for reasons unrelated to Rimini Street's infringement,

7   there is no causal relationship and therefore no lost profit damages as to that client. For example,

8   if a client left Oracle International Corporation in whole or in part because it was unhappy with

9   Oracle International Corporation's customer service, then Oracle International Corporation may

10 not obtain damages from Rimini Street for the loss of that client. Or if a client signed up with

11 Rimini Street for reasons partially unrelated to the infringement, such as Rimini Street's superior

12 customer service, then there is no causal relationship and therefore no lost profit damages.

13   Oracle International Corporation must prove causation by a preponderance of the

14 evidence for every single client for which it is claiming copyright damages.

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JURY INSTRUCTION NO. _____

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2   If you conclude that lost profits are the better measure of actual damages, then Oracle

3 International Corporation is also entitled to Rimini Street's profits that are directly attributable to

4 the infringement and were not taken into account in computing lost profits.

5   Double recovery is not allowed. You may not include in this award of Rimini Street's

6 profits any amount that you already took into account in determining Oracle International

7 Corporation's lost profits. Thus, if Rimini Street's profits are the same as Oracle International

8 Corporation's lost profits, then you may not include them in this award.

9   You may award Rimini Street's profits only if you find that Oracle International

10 Corporation showed a causal relationship between the infringement and the profits generated

11 directly or indirectly from Rimini Street's infringement. The causal relationship may not be

12 established by guessing or speculative evidence.

13   Rimini Street's profits are determined by subtracting all of Rimini Street's expenses from

14 Rimini Street's gross revenue. If Rimini Street's expenses exceed its gross revenue, then there

15 are no profits for you to award Oracle International Corporation.

16   Gross revenue includes only those receipts associated with Rimini Street's infringement

17 of Oracle International Corporation's copyrighted works. Gross revenue does not include Rimini

18 Street's overall gross sales resulting from all streams of revenue. Oracle International

19 Corporation has the burden of proving Rimini Street's gross revenue by a preponderance of the

20 evidence.

21   Expenses are all operating costs, overhead costs, and production costs incurred in

22 producing Rimini Street's gross revenue. Rimini Street bears the burden of proving its expenses

23 by a preponderance of the evidence.

24   Unless you find that a portion of the profit from the use of the copyrighted works is

25 attributable to factors other than use of the copyrighted works, all of the profit is to be attributed

26 to the infringement. Rimini Street has the burden of proving the portion of the profit, if any,

27 attributable to factors other than infringing the copyrighted works. Here, Rimini Street does not

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JURY INSTRUCTION NO. ____

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need to prove that amount with certainty, but instead it need only provide a reasonable approximation of the amount that is not attributable to infringement.

You must also determine whether Rimini Street added intrinsic value to the services it provided. In other words, if Rimini Street provided additional value beyond the value of infringement, such as superior support services (e.g., faster response time or more effective technical support), then you should deduct any of that value from the profits that may be awarded to Oracle International Corporation

You should determine infringer's profits separately for each Defendant that you find liable for copyright infringement.

JURY INSTRUCTION NO. _____

1

2   If you find that Rimini Street is liable for infringing Oracle International Corporation's

3   copyrights, Oracle International Corporation is alternatively entitled to statutory damages

4   established by Congress in the Copyright Act for each work infringed if: (i) Oracle International

5   Corporation elects statutory damages in lieu of actual damages; or (ii) if Oracle International

6   Corporation cannot prove without undue speculation either causation or the amount of actual

7   damages suffered as a result of the infringement.

8   The purpose of statutory damages is to penalize the infringer and deter future violations

9   of copyright law.

10   The amount you may award as statutory damages is not less than $750, and not more than

11 $30,000 for each work that you conclude was infringed.

12   However, if you find that the infringement was innocent, you may award as little as $200

13 for each work innocently infringed.

14   If you find that infringement was willful, you may award as much as $150,000 for each

15 work willfully infringed.

16   Instructions __ and __ will tell you what constitutes innocent infringement and what

17 constitutes willful infringement.

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JURY INSTRUCTION NO. ____

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2   In addition to its other claims, Oracle America contends that Rimini Street and Seth

3 Ravin induced customers to breach their contracts with Oracle America. Specifically, Oracle

4 America contends that the terms of use on its website and its software license agreements are

5 contracts with its customers. Oracle America contends that Rimini Street and Seth Ravin

6 intentionally caused Oracle America customers to breach their contracts with Oracle America.

7   To prevail on this claim in the circumstances of this case, Oracle America must prove

8 each of the following for each such contract by a preponderance of the evidence:

9   1)   A valid contract existed between Oracle America and a customer;

10   2)   Rimini Street and/or Seth Ravin knew the contract existed;

11   3)   Rimini Street and/or Seth Ravin intended to cause Oracle America's customer to

12   breach its contract with Oracle America;

13   4)   Rimini Street and/or Seth Ravin engaged in conduct that was wanton, malicious,

14   and unjustifiable;

15   5)   Rimini Street and/or Seth Ravin's conduct caused the customer to breach the

16   contract;

17   6)   Oracle America was directly harmed; and

18   7)   Rimini Street and/or Seth Ravin's improper conduct was a substantial factor in

19   causing Oracle America harm.

20   If you find that the customer would have breached its contract with Oracle America

21 regardless of whether Rimini Street and/or Seth Ravin engaged in the above conduct, then you

22 must find that Rimini Street and/or Seth Ravin is not liable for inducing breach of contract.

23   Mere knowledge of the contract is insufficient to establish that Rimini Street and/or Seth

24 Ravin intended or designed to disrupt Oracle America's contractual relationship; instead, Oracle

25 America must demonstrate that Rimini Street and/or Seth Ravin specifically intended to induce

26 the other party to breach the contract with Oracle America.

27   If you find that Oracle America suffered only nominal damages or speculative harm, then

28 you must find that Rimini Street and/or Seth Ravin is not liable for inducing breach of contract.

JURY INSTRUCTION NO. ____

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Oracle America must prove all of the above elements for every single customer for which it is claiming that Rimini Street and Seth Ravin induced a breach of contract. In considering these instructions, you must keep in mind that Oracle America has the burden to prove any damages for each specific client or prospective relationship. For example, if Oracle America proves damages as to one client, you may not extrapolate those damages to multiple clients, but instead must award only damages for the one client for which Oracle America has proven such damages.

If you find that Oracle America proved each of these elements as to Rimini Street and/or Seth Ravin, you should find for Oracle America and against Rimini Street and/or Seth Ravin on the claim for inducing breach of contract. If, on the other hand, Oracle America has failed to prove any of these elements as to Rimini Street and/or Seth Ravin, you should find for Rimini Street and/or Seth Ravin and against Oracle America on the claim for inducing breach of contract.

JURY INSTRUCTION NO. _____

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2   Oracle America and Oracle International Corporation seek to recover damages based

3 upon a claim of intentional interference with prospective economic advantage.

4   In order for you to find for Oracle America and/or Oracle International Corporation, you

5 must find by a preponderance of the evidence that:

6   1)   Oracle America and/or Oracle International Corporation had an expectancy in a

7   prospective contractual relationship with the customer;

8   2)   Rimini Street and/or Seth Ravin knew of the existence of the relationship;

9   3)   Rimini Street and/or Seth Ravin engaged in unlawful and improper conduct;

10   4)   By engaging in this conduct, Rimini Street and/or Seth Ravin intended to disrupt

11   the relationship;

12   5)   Rimini Street and/or Seth Ravin's conduct was not privileged or justified;

13   6)   The relationship was disrupted;

14   7)   Oracle America and/or Oracle International Corporation was harmed; and

15   8)   Rimini Street and/or Seth Ravin's unlawful and improper conduct was a

16   substantial factor in causing Oracle America and/or Oracle International

17   Corporation harm.

18   To find causation, you must find that but for Defendant's conduct, Oracle America and/or

19 Oracle International Corporation's harm would not have occurred. For example, if you find that

20 Oracle America and/or Oracle International Corporation would not have realized an economic

21 benefit regardless of Rimini Street and/or Seth Ravin's conduct, then you must find that Rimini

22 Street and/or Seth Ravin is not liable for intentional interference with prospective economic

23 advantage.

24   If Oracle America and/or Oracle International Corporation's contractual relations are

25 merely contemplated or potential, it is in the interest of the public that any competitor (here,

26 Rimini Street and Seth Ravin) should be free to divert the relationship to itself by all fair and

27 reasonable means. Therefore, if Oracle America and/or Oracle International Corporation fails to

28 establish that Rimini Street and/or Seth Ravin engaged in unlawful or improper means for each

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JURY INSTRUCTION NO. _____

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specific prospective relationship, then you must find that Rimini Street and/or Seth Ravin did not intentionally interfere with Oracle America and/or Oracle International Corporation's prospective economic advantage for that relationship.

"Unlawful or improper means" does not include breach of contract or copyright infringement. The only unlawful or improper means that Oracle America and Oracle International Corporation claim are related to alleged misrepresentations made by Rimini Street. Additionally, if the alleged misrepresentation is only an expression of opinion or statement of a future act, then Oracle America and/or Oracle International Corporation cannot rely upon it to establish unlawful or improper means. You must decide whether Oracle America and/or Oracle International Corporation has established any actionable misrepresentations and, if so, whether it is more likely than not that those misrepresentations were the specific cause of harm.

If you find that Oracle America and/or Oracle International Corporation suffered only nominal damages or speculative harm, then you must find that Rimini Street and Seth Ravin are not liable for intentional interference with prospective economic advantage.

Oracle America and/or Oracle International Corporation must prove all of the above elements for every single economic relationship for which it is claiming international interference with prospective economic advantage. In considering these instructions, you must keep in mind that Oracle has the burden to prove any damages for each specific client or prospective relationship. For example, if Oracle proves damages as to one client, you may not extrapolate those damages to multiple clients, but instead must award only damages for the one client for which Oracle has proven such damages.

If you find that Oracle America and/or Oracle International Corporation proved each of these elements as to Rimini Street and/or Seth Ravin, you should find for Oracle America and/or Oracle International Corporation and against Rimini Street and/or Seth Ravin on the claim for intentional interference with prospective economic advantage. If, on the other hand, Oracle America and/or Oracle International Corporation has failed to prove any of these elements as to Rimini Street and/or Seth Ravin, you should find for Rimini Street and/or Seth Ravin and against

JURY INSTRUCTION NO. ____

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Oracle America and/or Oracle International Corporation on the claim for intentional interference

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with prospective economic advantage.

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JURY INSTRUCTION NO. _____

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2   A party does not intentionally interfere with prospective economic advantage when the

3 party engages in free competition. In other words, a party is free to divert business to itself by all

4 fair and reasonable means because it is in the interest of the public that companies compete

5 against each other. Therefore, if you find the following elements, then you must find that Rimini

6 Street and Seth Ravin did not intentionally interfere with Oracle America and/or Oracle

7 International Corporation's prospective economic advantage:

8   1)   The relation concerns a matter involved in the competition between Rimini Street

9   and/or Seth Ravin and Oracle America and/or Oracle International Corporation;

10   2)   Rimini Street and/or Seth Ravin did not employ wrongful means;

11   3)   Rimini Street and/or Seth Ravin's action did not create or continue an unlawful

12   restraint of trade; and

13   4)   Rimini Street and/or Seth Ravin's purpose was at least in part to advance its

14   interest in competing with Oracle America and/or Oracle International

15   Corporation.

16   In other words, so long as Rimini Street and/or Seth Ravin's motivation was at least

17 partially to compete with Oracle America and/or Oracle International Corporation, and Rimini

18 Street and/or Seth Ravin did not employ wrongful means to compete with Oracle America and/or

19 Oracle International Corporation, then you must find that Rimini Street and/or Seth Ravin acted

20 in the interests of free competition and did not intentionally interfere with Oracle America and/or

21 Oracle International Corporation's prospective economic advantage.

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JURY INSTRUCTION NO. ____

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2   For Oracle America to prevail on its claim for inducing breach of contract or for Oracle

3   America or Oracle International Corporation to prevail on its claim for intentional interference

4   with prospective economic advantage, you must also find that the Rimini Street and/or Seth

5   Ravin knew of the existence of the contract or prospective relationship. To have knowledge

6   means that Rimini Street and/or Seth Ravin has information concerning the contract or

7   prospective relationship, which was discovered by Rimini Street and/or Seth Ravin or was

8   brought to Rimini Street and/or Seth Ravin's attention by others.

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JURY INSTRUCTION NO. ____

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For Oracle America to prevail on its claim for inducing breach of contract or for Oracle America or Oracle International Corporation to prevail on its claim for intentional interference with prospective economic advantage, you must find intentional conduct by a Defendant. For purposes of these two claims, conduct is intentional if done with the specific desire to cause Oracle America's client to breach its contract or to improperly and unlawfully interfere with the prospective relationship between Oracle America or Oracle International Corporation and a third party.

Intent ordinarily may not be proved directly, because there is no way of scrutinizing the operations of the human mind. You may infer a person's intent from conduct substantially certain to cause disruption or interference, but you are not required to infer it and should consider all of the circumstances. You may consider any statements made or acts done or omitted by a party whose intent is an issue, and all of the facts and circumstances that indicate the party's state of mind.

JURY INSTRUCTION NO. ____

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2   A substantial factor in causing harm is a factor that a reasonable person would consider to

3   have contributed to the harm. It must be more than a remote or trivial factor. It does not have to

4   be the only cause of harm.

5   Conduct is not a substantial factor in causing harm if the same harm would have occurred

6   without that conduct.

7   Put another way, the "substantial factor" test means that "but for" the defendant's

8   conduct, the plaintiff's harm would not have occurred.

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JURY INSTRUCTION NO. _____

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2   If you find for Oracle America on its inducing breach of contract claim or for Oracle

3   America or Oracle International on its intentional interference with prospective economic

4   advantage claim, you must determine compensatory damages. Compensatory damages consist

5   of the amount of money that will reasonably and fairly compensate Oracle America or Oracle

6   International Corporation for any damage due to the conduct that created liability on the claim.

7   Oracle America and Oracle International Corporation have the burden to prove compensatory

8   damages by a preponderance of the evidence

9   In considering these instructions, you must keep in mind that Oracle America or Oracle

10 International Corporation has the burden to prove any damages for each specific client or

11 prospective relationship. For example, if Oracle America or Oracle International Corporation

12 proves damages as to one client, you may not extrapolate those damages to multiple clients, but

13 instead must award only damages for the one client for which Oracle America or Oracle

14 International Corporation has proven such damages.

15 In determining compensatory damages on these claims, you may consider whether Oracle

16 America or Oracle International Corporation suffered any measurable loss of profits as a result of

17 Rimini Street and/or Seth Ravin's conduct. In this case, Oracle America and Oracle

18 International Corporation contend that their business was affected because of loss of profits they

19 might have earned but for Rimini Street and/or Seth Ravin's conduct. Oracle America and

20 Oracle International Corporation must prove any such loss of profits with reasonable certainty

21 and individually as to each specific client or prospective relationship.

22 Damages, if any, should be restricted to such losses, if any, as are proved by facts from

23 which their existence is logically and legally inferable. The general rule on the subject of

24 damages is that all damages resulting necessarily, immediately, and directly from the wrong are

25 recoverable, and not those that are contingent and uncertain or mere speculation.

26 Although a qualified person may make estimates concerning probable profits or losses of

27 a going business, you should, in weighing all such evidence, take into consideration, among

28 other things, the truth or falsity of the basis of such estimates; the knowledge or lack of

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JURY INSTRUCTION NO. ____

knowledge of the witnesses of all of the conditions on which the estimate is based; whether the facts assumed as a basis for an estimate rest upon actual accounts and records kept in the ordinary course of business rather than in uncertain recollections; and knowledge of the witness in the particular line of business about which the witness testifies. From all of the evidence in this case bearing on the subject, you should determine for yourselves the probability or improbability, and the amount, of profits anticipated by Oracle America or Oracle International Corporation.

The difficulty or uncertainty in ascertaining or measuring the precise amount of any damages does not preclude recovery, and you, the jury, should use your best judgment in determining the amount of such damages, if any, based upon the evidence. However, damages may not be based on speculation or guesswork.

That the defendant did not actually anticipate or contemplate that these losses would occur is not a relevant factor for you to consider.

JURY INSTRUCTION NO. _____

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2   Oracle America and Oracle International Corporation contend that Rimini Street and Seth

3 Ravin violated five sections of the Federal Computer Fraud and Abuse Act ("CFAA").

4   The CFAA is an anti-hacking statute that should be applied narrowly and is intended to

5 prohibit only computer hacking, not the general unauthorized use of information obtained from a

6 computer.

7   In this case, Oracle America and Oracle International Corporation claim that Defendants

8 violated the Computer Fraud and Abuse Act because, according to Oracle America and Oracle

9 International Corporation, Rimini Street and Seth Ravin caused damage to Oracle America and

10 Oracle International Corporation's computer systems by transmitting a program, information,

11 code, or command that damaged Oracle America and Oracle International Corporation

12 computers.

13   I will now instruct you on various sections of the CFAA, and the damages you may

14 award if you find any CFAA violation.

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JURY INSTRUCTION NO. _____

1

2   *First*, Oracle America and Oracle International Corporation contend that Rimini Street

3   and Seth Ravin unlawfully obtained information from a protected computer in violation of the

4   CFAA, Section 1030(a)(2)(C).   To prevail under this provision, Oracle America and Oracle

5   International Corporation must prove each of the following elements by a preponderance of the

6   evidence:

7   1)   Rimini Street and/or Seth Ravin intentionally accessed a computer without

8   authorization, or exceeded authorized access;

9   2)   Through such access, Rimini Street and/or Seth Ravin obtained information from

10   a protected computer; and,

11   3)   Such access caused loss to Oracle America and Oracle International Corporation

12   totaling at least $5,000 in value during any one-year period.

13   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

14   access Oracle America and/or Oracle International Corporation's computer, then you must find

15   that Rimini Street and/or Seth Ravin did not violate the Computer Fraud and Abuse Act.

16   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

17   Oracle America and/or Oracle International Corporation's computer, then you must find that

18   Rimini Street and/or Seth Ravin did not violate the Computer Fraud and Abuse Act.

19   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

20   you must find that Rimini Street and/or Seth Ravin did not violate the Computer Fraud and

21   Abuse Act.

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JURY INSTRUCTION NO. ____

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2   *Second*, Oracle America and Oracle International Corporation contend that Rimini Street

3   and Seth Ravin committed damage to a protected computer in violation of the CFAA, Section

4   1030(a)(5)(A).   To prevail under this provision, Oracle America and Oracle International

5   Corporation must prove each of the following elements by a preponderance of the evidence:

6   1)   Rimini Street and/or Seth Ravin knowingly caused the transmission of a program,

7   information, code, or command to a computer;

8   2)   As a result of such transmission, Rimini Street and/or Seth Ravin intentionally

9   caused damage to a protected computer without authorization; and

10   3)   Such transmission caused loss to Oracle America and Oracle International

11   Corporation during any one-year period aggregating at least $5,000 in value.

12   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

13   access Oracle America and/or Oracle International Corporation's computer, then you must find

14   that Rimini Street and/or Seth Ravin did not violate the Computer Fraud and Abuse Act.

15   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

16   Oracle America and/or Oracle International Corporation's computer, then you must find that

17   Rimini Street and/or Seth Ravin did not violate the Computer Fraud and Abuse Act.

18   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

19   you must find that Rimini Street and/or Seth Ravin did not violate the Computer Fraud and

20   Abuse Act.

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JURY INSTRUCTION NO. ____

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2   *Third*, Oracle America and Oracle International Corporation contends that that Rimini

3   Street and Seth Ravin recklessly damaged a protected computer in violation of the CFAA,

4   Section 1030(a)(5)(B). To prevail under this provision, Oracle America and Oracle International

5   Corporation must prove each of the following elements by a preponderance of the evidence:

6   1)   Rimini Street and/or Seth Ravin intentionally accessed a protected computer

7   without authorization;

8   2)   As a result of such conduct, Rimini Street and/or Seth Ravin recklessly caused

9   damage; and,

10   3)   Such access caused loss to Oracle America and/or Oracle International

11   Corporation during any one-year period aggregating at least $5,000 in value.

12   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

13 access Oracle America and/or Oracle International Corporation's computer, then you must find

14 that Rimini Street and/or Seth Ravin did not violate the Computer Fraud and Abuse Act.

15   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

16 Oracle America and/or Oracle International Corporation's computer, then you must find that

17 Rimini Street and/or Seth Ravin did not violate the Computer Fraud and Abuse Act.

18   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

19 you must find that Rimini Street and/or Seth Ravin did not violate the Computer Fraud and

20 Abuse Act.

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JURY INSTRUCTION NO. ____

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2   If you find that Rimini Street and/or Seth Ravin violated any of the CFAA sections

3   described above, you may award Oracle America and/or Oracle International Corporation

4   damages under the CFAA from that Rimini Street and/or Seth Ravin caused. These damages

5   may include:

6   1)   costs of responding to the violation;

7   2)   costs of conducting a damage assessment;

8   3)   costs of restoring the system and data to its prior condition;

9   4)   lost revenues or costs due to interruption of service; and

10   5)   costs of investigating the violation;

11   Any such damages must be tied directly to the specific violation. In other words, it is

12 Oracle's burden to prove that any such unauthorized access caused actual damages. For

13 example, if Oracle claims it lost revenue as a result of unauthorized access to its computer

14 systems, it must prove how the unauthorized access directly caused it to lose revenue.

15   It is Oracle's burden to prove its damages by a preponderance of the evidence. Damages

16 may not be based on speculation or guesswork.

17   You should determine damages separately for each Defendant, if any, that you find

18 violated the CFAA.

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JURY INSTRUCTION NO. _____

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2   *First*, Oracle America and Oracle International Corporation contend that Rimini Street

3   and Seth Ravin violated the CDAFA, Section 502(c)(2). To prevail under this provision, Oracle

4   America and Oracle International Corporation must prove each of the following by a

5   preponderance of the evidence:

6   1)   Rimini Street and/or Seth Ravin knowingly accessed and without permission took

7   or made use of any data, computer, computer system, or computer network, or

8   took any supporting documentation; and

9   2)   Thereby caused Oracle America and Oracle International Corporation to suffer

10   damage or loss.

11   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

12   access Oracle America and/or Oracle International Corporation's computer, then you must find

13   that Rimini Street and/or Seth Ravin did not violate the CDAFA.

14   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

15   Oracle America and/or Oracle International Corporation's computer, then you must find that

16   Rimini Street and/or Seth Ravin did not violate the CDAFA.

17   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

18   you must find that Rimini Street and/or Seth Ravin did not violate the CDAFA.

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JURY INSTRUCTION NO. ____

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2   *Second*, Oracle America and Oracle International Corporation contend that Rimini Street

3 and Seth Ravin violated the CDAFA, Section 502(c)(3). To prevail under this provision, Oracle

4 America and Oracle International Corporation must prove each of the following by a

5 preponderance of the evidence:

6   1)   Rimini Street and/or Seth Ravin knowingly accessed and without permission used

7   or caused to be used computer services; and

8   2)   Thereby caused Oracle America and Oracle International Corporation to suffer

9   damage or loss.

10   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

11 access Oracle America and/or Oracle International Corporation's computer, then you must find

12 that Rimini Street and/or Seth Ravin did not violate the CDAFA.

13   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

14 Oracle America and/or Oracle International Corporation's computer, then you must find that

15 Rimini Street and/or Seth Ravin did not violate the CDAFA.

16   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

17 you must find that Rimini Street and/or Seth Ravin did not violate the CDAFA.

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JURY INSTRUCTION NO. ____

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2   *First*, Oracle America and Oracle International Corporation contend that Rimini Street

3 and Seth Ravin violated the NCCL, Section 1. To prevail under this provision, Oracle America

4 and Oracle International Corporation must prove each of the following by a preponderance of the

5 evidence:

6   1)   Rimini Street and/or Seth Ravin modified, damaged, disclosed, used, transferred,

7   concealed, retained possession of, obtained or attempted to obtain access to,

8   permitted access to or caused to be accessed, or entered any of the following:

9   data, a program or any supporting documents which exist inside or outside a

10   computer, system or network;

11   2)   Rimini Street and/or Seth Ravin did so knowingly, willfully, and without

12   authorization; and

13   3)   Oracle America and/or Oracle International Corporation was the victim of the

14   Defendant's conduct.

15   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

16 access Oracle America and/or Oracle International Corporation's computer, then you must find

17 that Rimini Street and/or Seth Ravin did not violate the NCCL.

18   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

19 Oracle America and/or Oracle International Corporation's computer, then you must find that

20 Rimini Street and/or Seth Ravin did not violate the NCCL.

21   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

22 you must find that Rimini Street and/or Seth Ravin did not violate the NCLL.

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JURY INSTRUCTION NO. _____

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2   *Second*, Oracle America and Oracle International Corporation contend that Rimini Street

3   and Seth Ravin violated the NCCL, Section 3. To prevail under this provision, Oracle America

4   and Oracle International Corporation must prove each of the following by a preponderance of the

5   evidence:

6   1)   Rimini Street and/or Seth Ravin damaged, altered, transferred, disclosed,

7   concealed, used, retained possession of, or obtained or attempted to obtain access

8   to, permitted access to or caused to be accessed any of the following: a computer,

9   system or network;

10   2)   Rimini Street and/or Seth Ravin did so knowingly, willfully, and without

11   authorization; and

12   3)   Oracle America and/or Oracle International Corporation was the victim of the

13   Defendant's conduct.

14   If you find that a customer or licensee authorized Rimini Street and/or Seth Ravin to

15 access Oracle America and/or Oracle International Corporation's computer, then you must find

16 that Rimini Street and/or Seth Ravin did not violate the NCCL.

17   If you find that Rimini Street and/or Seth Ravin believed it had authorization to access

18 Oracle America and/or Oracle International Corporation's computer, then you must find that

19 Rimini Street and/or Seth Ravin did not violate the NCCL.

20   If you find that Rimini Street and/or Seth Ravin believed its actions were not illegal, then

21 you must find that Rimini Street and/or Seth Ravin did not violate the NCLL.

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JURY INSTRUCTION NO. _____

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2   Oracle America contends that Rimini Street and Seth Ravin breach contracts with Oracle

3   America. Specifically, Oracle America contends that in order to gain access to Oracle America's

4   customer support websites, each user must agree to abide by terms of use for those websites,

5   creating a contract between Oracle America and the user. Oracle America contends that

6   Defendants agreed to these terms of use, but then violated that contract by engaging in conduct

7   that the contract prohibited. Oracle America contends that Defendants' breach of contract

8   caused harm for which Defendants should pay.

9   To prevail on its claim for breach of contract, Oracle America must prove by a

10   preponderance of the evidence all of the following:

11   1)   Oracle America and a Defendant entered into a contract;

12   [Insert specific contracts Oracle introduces at trial]

13   2)   Oracle America did all, or substantially all, of the significant things that the

14   contract required it to do;

15   [Insert specific performance Oracle establishes at trial]

16   3)   All conditions required by the contract for Oracle America's performance had

17   occurred;

18   4)   Rimini Street failed to do something that the contract required, or did something

19   that the contract prohibited; and

20   [Insert specific allegations of breach Oracle establishes at trial]

21   5)   Oracle America was harmed by that failure.

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JURY INSTRUCTION NO. ____

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2   If you decide that Rimini Street breached the contract but also that Oracle America was

3   not harmed by the breach, you may still award Oracle America nominal damages such as one

4   dollar.

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JURY INSTRUCTION NO. _____

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2   A substantial factor in causing harm is a factor that a reasonable person would consider to

3 have contributed to the harm. It must be more than a remote or trivial factor. It does not have to

4 be the only cause of harm.

5   Conduct is not a substantial factor in causing harm if the same harm would have occurred

6 without that conduct.

7   Put another way, the "substantial factor" test means that "but for" the defendant's

8 conduct, the plaintiff's harm would not have occurred.

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JURY INSTRUCTION NO. _____

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2   Punitive damages are aimed at deterrence and punishment, and pose an acute danger of

3 arbitrary deprivation of property. In deciding whether to impose punitive damages, you must

4 keep in mind that society views the imposition of punishment, including punitive damages, as a

5 very serious task that should be done only after careful and thoughtful deliberation. Punitive

6 damages are disfavored in the law and should be imposed only with caution and within narrow

7 limits. In deciding whether to impose any punitive damages, and in fixing the amount, if any,

8 you must act with calm reason and sound discretion and take care to ensure that bias, passion, or

9 prejudice do not enter into your decision in any way. The decision whether to impose punitive

10 damages is discretionary, which means that you do not have to award them even if you find that

11 the evidence would support them. The fact that the Court is instructing you on the law of

12 punitive damages is not meant in any way to influence your decision whether to impose them.

13   You must not award punitive damages to send a message to Rimini Street and/or Seth

14 Ravin or to prevent Rimini Street and/or Seth Ravin from lawfully competing with Oracle

15 America or Oracle International Corporation.

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JURY INSTRUCTION NO. _____

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2   If you find that Oracle America and/or Oracle International Corporation is entitled to

3 compensatory damages for actual harm or loss on any of the following claims, then you may, but

4 are not required to, award punitive damages to Oracle America and/or Oracle International

5 Corporation:

6   1)   California Computer Data Access and Fraud Act (CDAFA);

7   2)   Nevada Computer Crime Law (NCCL); or

8   3)   Intentional interference with prospective economic advantage.

9   You may not award punitive damages with respect to any other claim by any of the

10 plaintiffs.

11   If you find that Oracle America and/or Oracle International Corporation are entitled to

12 compensatory damages for actual harm or loss caused under one or more of those claims, then

13 you may consider whether you should award punitive damages against that Defendant.   The

14 question whether to award punitive damages against a particular Defendant must be considered

15 separately with respect to each Defendant.

16   You may award punitive damages against a Defendant only if Oracle America and/or

17 Oracle International Corporation proves by clear and convincing evidence that the wrongful

18 conduct upon which you base your finding of liability for compensatory damages was engaged in

19 with fraud, oppression or malice on the part of that Defendant.

20   To award punitive damages against Rimini Street, you must also find that the conduct

21 constituting malice, oppression, or fraud was committed by one or more officers, directors, or

22 managing agents of Rimini Street who acted on behalf of Rimini Street or an officer, director, or

23 managing agent authorized the conduct or knew the conduct occurred and approved it after it

24 occurred.

25   You cannot punish the Defendant for conduct that is lawful, or which did not cause actual

26 harm or loss to Oracle America and/or Oracle International Corporation.   For the purposes of

27 your consideration of punitive damages only:

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JURY INSTRUCTION NO. _____

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2   "Fraud" means an intentional misrepresentation, deception or concealment of a material

3   fact known to a defendant with the intent to deprive Oracle America and/or Oracle International

4   Corporation of rights or property or to otherwise injure Oracle America and/or Oracle

International Corporation.

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      "Oppression" means despicable conduct that subjects Oracle America and/or Oracle
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International Corporation to cruel and unjust hardship with a conscious disregard of the rights of
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the Oracle America and/or Oracle International Corporation.
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      "Malice" means conduct which is intended to injure the Oracle America and/or Oracle
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International Corporation or despicable conduct which is engaged in with a conscious disregard
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of the rights or safety of Oracle America and/or Oracle International Corporation.
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      "Despicable conduct" means conduct that is so vile, base or contemptible that it would be
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looked down upon and despised by ordinary, decent people.
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      "Conscious disregard" means knowledge of the probable harmful consequences of a
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wrongful act and a willful and deliberate failure to avoid these consequences.
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      The purposes of punitive damages are to punish a wrongdoer that acts with fraud,
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oppression and/or malice in harming a plaintiff and deter similar conduct in the future, not to
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make the plaintiff whole for its injuries. Consequently, a plaintiff is never entitled to punitive
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damages as a matter of right and whether to award punitive damages against a Defendant is
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entirely within your discretion.
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      You are only asked to decide whether punitive damages would be proper and justified in
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this case. You are not asked to determine an amount of punitive damages.
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JURY INSTRUCTION NO. _____

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2   Punitive damages may not be used to punish Rimini Street and/or Seth Ravin for conduct

3   or harm that was not proven at trial or based on harm to persons other than Oracle. Rather,

4   punitive damages must be limited to the specific harm suffered by Oracle America and/or Oracle

5   International Corporation and that Oracle America and/or Oracle International Corporation

6   proved at trial. Accordingly, you must limit any punitive damages you award to the specific

7   harm from losing the specific clients for which Oracle America and/or Oracle International

8   Corporation has proven that Rimini Street and/or Seth Ravin induced a breach of contract or

9   intentionally interfered with Oracle America and/or Oracle International Corporation's

10 prospective economic advantage. You may award punitive damages only related to the conduct

11 for those specific clients.

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JURY INSTRUCTION NO. ____

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2   Even if you find that punitive damages might be available, if you decide that Rimini

3 Street and/or Seth Ravin acted based on an objectively reasonable belief that its conduct was not

4 unlawful, such as its interpretation of what the licenses allowed, then you must not award any

5 punitive damages.

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JURY INSTRUCTION NO. ____

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2   Even if you find that punitive damages might be available, if you decide that Rimini

3   Street and/or Seth Ravin acted consistent with industry standards or custom, then you must not

4   award any punitive damages.

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JURY INSTRUCTION NO. _____

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2   Even if you find that punitive damages might be available, if you decide that at the time

3   of the challenged conduct Rimini Street and/or Seth Ravin was not on reasonable and fair notice

4   that its conduct was unlawful, then you must not award any punitive damages.

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JURY INSTRUCTION NO. _____

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2   You must now decide the amount, if any, that you should award Oracle America and/or

3   Oracle International Corporation in punitive damages. There is no right to punitive damages.

4   Accordingly, you need not award punitive damages even if you have found that the standard for

5   imposing punitive damages has been satisfied.

6   The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed

7   the plaintiff and to discourage similar conduct in the future. There is no fixed formula for

8   determining the amount of punitive damages and you are not required to award any punitive

9   damages. If you decide to award punitive damages, you should consider all of the following

10 factors separately in determining the amount:

11   (a)   How reprehensible was that defendant's conduct? In deciding how reprehensible a

12 defendant's conduct was, you may consider, among other factors:

13   1)   Whether the conduct caused physical harm;

14   2)   Whether the defendant disregarded the health or safety of others;

15   3)   Whether Oracle America and/or Oracle International Corporation was financially

16   weak or vulnerable and the Defendant knew Oracle America and/or Oracle

17   International Corporation was financially weak or vulnerable and took advantage

18   of it;

19   4)   Whether Defendant's conduct involved a pattern or practice; and

20   5)   Whether Defendant acted with trickery or deceit.

21   (b)   Is there a reasonable relationship between the amount of punitive damages and

22 Oracle America and/or Oracle International Corporation harm that Rimini Street and/or Seth

23 Ravin knew was likely to occur because of its conduct?

24   (c)   In view of Defendant's financial condition, what amount is necessary to punish it

25 and discourage future wrongful conduct? You may not increase the punitive award above an

26 amount that is otherwise appropriate merely because a defendant has substantial financial

27 resources. Any award you impose may not exceed Rimini Street and/or Seth Ravin's ability to

28 pay.

JURY INSTRUCTION NO. ____

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2   Punitive damages may not be used to punish Rimini Street and/or Seth Ravin for conduct

3   or harm that was not proven at trial or based on harm to persons other than Oracle America

4   and/or Oracle International Corporation.   Rather, punitive damages must be limited to the

5   specific harm suffered by Oracle America and/or Oracle International Corporation and that

6   Oracle America and/or Oracle International Corporation proved at trial.   Accordingly, you must

7   limit any punitive damages you award to the specific harm from losing the specific clients for

8   which Oracle America and/or Oracle International Corporation has proven that Rimini Street

9   and/or Seth Ravin induced a breach of contract or intentionally interfered with Oracle America

10   and/or Oracle International Corporation's prospective economic advantage.   You may award

11   punitive damages only related to the conduct for those specific clients.

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JURY INSTRUCTION NO. ____

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2   The purpose of compensatory damages is to compensate the plaintiff and to make him

3 whole. However, a substantial award of compensatory damages also has the effect of punishing

4 and deterring misconduct. Therefore, in determining the amount of punitive damages, if any, to

5 award, you must consider the punitive and deterrent effect associated with your award of

6 compensatory damages alone.

7   The size of the punitive damage award must bear a reasonable relationship to the amount

8 of harm caused to the plaintiffs by the defendant's punishable misconduct. If the compensatory

9 damages awarded are substantial, then a punitive damage award equal to the compensatory

10 award can reach the outermost limit permitted by law, although a lesser amount may be

11 appropriate.

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JURY INSTRUCTION NO. ____

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2   The purpose of punitive damages is not served by financially destroying a defendant.

3 Therefore, any award of punitive damages should reflect the amount you believe is appropriate

4 to punish and deter, but you should not award an amount of punitive damages that is a significant

5 percentage of a Rimini Street and/or Seth Ravin's net worth, that would prevent Rimini Street

6 from continuing to operate, or that would threaten bankruptcy because such a punitive damages

7 award would be excessive under the law.

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JURY INSTRUCTION NO. ____

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2   Oracle seeks an award of damages under multiple claims or legal theories. Oracle is not

3   entitled to recover twice for the same injury. For example, if you conclude that Rimini Street is

4   liable for causing Oracle to lose a customer under multiple claims or theories, you must award

5   damages to Oracle for that customer only once.

6   After each claim or legal theory on your verdict form, there is a space for the amount of

7   damages – if any – that you intend to award to Oracle under that claim or legal theory. The

8   amount you enter into these spaces should not include damages that are duplicative of other

9   damages you have awarded for other claims or theories.

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JURY INSTRUCTION NO. _____